

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Case No.: 5:18 CR 182
)	
Plaintiff)	
)	
v.)	
)	JUDGE SOLOMON OLIVER, JR.
JOSEPH TERLIZZI,)	
)	
)	
Defendant)	<u>ORDER</u>

Currently pending before the court in the above-captioned case is Defendant Joseph Terlizzi's Motion to Suppress Evidence, arguing that the Government lacked probable cause to support a search warrant for a residence at 4226 W. 22nd Street (ECF No. 64). The court heard arguments from the parties on April 17, 2019. For the following reasons, the court grants Defendant's Motion.

I. BACKGROUND

A. Factual Background

Defendant Joseph Terlizzi ("Terlizzi") is one of eight defendants criminally indicted on August 1, 2018 for crimes in connection with the possession, distribution, and manufacturing of controlled substances. On March 26, 2019, investigators sought and obtained a search warrant for 4226 W. 22nd Street in Cleveland, Ohio, based on the following information contained in the affidavit supporting the warrant request:

In early 2018, the Drug Enforcement Agency (“DEA”) began investigating Tyrone Rogers (“Rogers”), a co-defendant in this case, for drug trafficking activity. On March 23, 2018, around 5:33 p.m., agents surveilling Rogers observed an interaction between Rogers and Terlizzi. Rogers, who was driving a Ford Fusion, stopped and parked on West 23rd Street in Cleveland, Ohio. (Aff. ¶ 77, ECF No. 64-1.) Rogers remained in his vehicle. Terlizzi walked from the area of 4274 W. 23rd Street and a house next to it, to a Cadillac Escalade parked across the street. (*Id.* ¶ 78.) Terlizzi opened the driver’s door of the Cadillac and retrieved a briefcase from inside the vehicle. (*Id.*) Terlizzi then walked with the briefcase to Rogers’ Ford Fusion. (*Id.*) He placed the briefcase in the front passenger compartment of the Fusion through the open passenger window. (*Id.*) Terlizzi then entered the Fusion via the front passenger side, and Rogers drove them around the block. (*Id.*) Less than five minutes later, Rogers returned to the vicinity of 4274 W. 23rd Street and parked the Fusion behind the Cadillac on West 23rd Street. (*Id.* ¶ 78.) After a few minutes, Terlizzi exited the Fusion with the briefcase and walked behind the house at 4274 W. 23rd Street. (*Id.* ¶ 79.) Rogers exited the Fusion seconds later and followed Terlizzi into 4274 W. 23rd Street, entering through the side door. (*Id.*) About an hour later, Rogers and Terlizzi came out of the house. (*Id.* ¶ 81.) Rogers was carrying grocery style bags, which he discarded into a trash can situated next to Rogers’ Fusion that was still parked on West 23rd Street. (*Id.*) Rogers got into the Fusion and Terlizzi got into the Cadillac, and both departed from the location. (*Id.*) Agents lost sight of Rogers shortly thereafter, but were able to follow Terlizzi to 4226 West 22nd Street (the “W. 22 Residence” or the “Residence”). (*Id.* ¶ 82.) Terlizzi exited the Cadillac carrying the previously observed briefcase and entered the rear door of the Residence after knocking on the door several times. (*Id.*) The affidavit never states what is, or is suspected to be, in the briefcase. A few minutes later, Terlizzi exited the Residence and returned

to the Cadillac to retrieve an unknown item, and then returned to the Residence. (*Id.* ¶ 83.) The agents terminated surveillance at approximately 7:04 p.m. That same evening, agents retrieved the plastic grocery bags that Rogers had earlier discarded in a trash can on West 23rd Street, and found three suspected kilogram wrappers containing suspected cocaine residue. (*Id.* ¶ 84.)

At 4:20 a.m. the next day, March 24, 2018, investigators executed a search warrant at a warehouse in Ohio, pursuant to information collected as a result of the interception of phone calls, electronic communications, and surveillance of Rogers. Investigators seized 82 pounds of crystal methamphetamine, and agents observed what they believed was a crystal methamphetamine processing facility. (*Id.* ¶ 100.) Investigators did not leave a copy of the warrant or any attachments.¹ Thus, later that morning, Rogers began speculating as to who had broken into the warehouse and taken the drugs. (*Id.* ¶ 101.) As part of this inquiry, Rogers went to meet “Sham,” who the Government later identifies as Co-Defendant Shauheen Sohrabi (“Sohrabi”), at 711 Twinsburg Road, Unit #1 in Northfield, Ohio (“Twinsburg Property”). (*Id.* ¶ 114.) Together, they called Co-Defendant Deon Johnson (“Johnson”). (*Id.*) On this call, Sohrabi told Johnson that he did not steal the drugs, and that he would not steal the drugs because he had access “right there” to “300 or 400 of his own.” (*Id.*) The investigators noted that they believed this meant 300 to 400 pounds of methamphetamine. (*Id.*)

¹ Although the investigators had requested a delayed notice warrant, the language in the warrant stated that if items are found there and agents seized them, that the agents were to “leav[e] a copy of this warrant and a receipt of the property taken, and prepare a written inventory of the property seized.”(ECF No. 66-1.) Investigators did not leave a copy of the warrant or any other notice of the authorized search. However, after hearing arguments from the parties, the court determined, on the record, that there was no constitutional violation in the investigators’ failure to leave notice.

On March 26, 2018, the DEA learned from a lease agreement that Terlizzi was the person renting the Twinsburg Property, which the investigators note is the same location suspected of housing 300 to 400 pounds of methamphetamine based on Sohrabi's call to Johnson. (*Id.* ¶ 115.) Investigators then conducted a property search and found the W. 22 Residence listed under "Jenna Terlizzi." (*Id.* ¶ 116.) Based on all of the information above, the investigators stated that they believed that the W. 22 Residence was being used to stash cocaine and possible large quantities of methamphetamine. (*Id.* ¶ 117.)

B. Procedural History

As a result of the search on the W. 22 Residence, investigators found, among other things, a firearm, cocaine, and heroin. On August 1, 2018, Terlizzi was indicted on eight counts for the following crimes: conspiracy to possess with intent to distribute methamphetamine; manufacture and possession with intent to distribute methamphetamine, and aiding and abetting; possession with intent to distribute cocaine, and aiding and abetting; felon in possession of firearms; possession with intent to distribute cocaine and heroin; possession of a firearm in furtherance of a drug trafficking crime; and use of a communication facility in furtherance of a drug trafficking crime. On January 15, 2019, Terlizzi filed a Motion to suppress the evidence found during the search of the W. 22 Residence (ECF No. 64). The Government submitted its Response in Opposition on March 6, 2019 (ECF No. 69). On April 17, 2019, the court heard arguments from the parties with respect to Terlizzi's Motion.

II. LEGAL STANDARD

The Fourth Amendment protects against unreasonable searches and seizures by generally forbidding the introduction in court of evidence seized by government officers through a violation

of the amendment. *Olmstead v. United States*, 277 U.S. 438, 462 (1928). Although the Fourth Amendment “contains no provision expressly precluding the use of evidence obtained in violation of its commands,” the exclusionary rule “operates as ‘a judicially created remedy . . . through its deterrent effect, rather than a personal constitutional right of the party aggrieved.’” *United States v. Leon*, 468 U.S. 897, 906 (1984) (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)).

The Fourth Amendment requires probable cause to support the issuance of search warrants. U.S. Const. amend. IV. To find probable cause, a judge issuing a warrant must determine that there is a fair probability that agents will find evidence of criminality on the premises. *United States v. Williams*, 544 F.3d 683, 685–86 (6th Cir. 2008); *see also United States v. Davidson*, 936 F.2d 856, 859 (6th Cir. 1991) (noting that probable cause requires a “probability or substantial chance of criminal activity”). This determination must be supported by a demonstration of a nexus between the place searched and the suspected criminal activity, based on the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 230–35 (1983); *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978). Vague generalizations are not sufficient to support a nexus. *United States v. Brown*, 828 F.3d 375, 382 (6th Cir. 2016). When a court is making a probable cause determination, a court is limited to the four corners of the affidavit. *United States v. Frazier*, 423 F.3d 526, 532 (6th Cir. 2005).

Even when evidence is obtained in violation of the Fourth Amendment, it should not be suppressed if the evidence was “obtained in objectively reasonable reliance on a search warrant that is subsequently invalidated.” *United States v. Laughton*, 409 F.3d 744, 748 (6th Cir. 2005). In considering the application of the “good faith exception,” the court may look at the totality of the circumstances. *United States v. Leon*, 468 U.S. 897, 922–23, n.23 (1984)).

III. LAW AND ANALYSIS

A. Probable Cause

In arguing that probable cause exists, the government relies on the following information presented in the affidavit: (1) Rogers was a known drug dealer who met with Terlizzi at a nearby location; (2) during their meeting, Rogers discarded three suspected kilo wrappers with suspected cocaine residue; (3) Terlizzi drove to the W. 22 Residence shortly after his meeting with Rogers; (4) Terlizzi traveled with and brought into the W. 22 Residence the same briefcase that he had brought into Rogers' car during their meeting; (5) a female with the last name Terlizzi was associated with the W. 22 Residence; (6) Terlizzi was associated with the Twinsburg Property, which is where Sohrabi had stated that he possessed drugs. (Opp'n at 15, ECF No. 69.) Terlizzi contends that this information, accumulated from a total of one and a half hours of surveillance, does not support a sufficient nexus for the search of the W. 22 Residence for evidence of drug activity.

The court finds that, taken as a whole, the facts do not support a reasonable basis that the W. 22 Residence was being used as a stash house for drugs. Although the totality of the circumstances presented in the affidavit certainly casts suspicion on Terlizzi generally, the statements are "too vague, generalized, and insubstantial to establish probable cause" to support a search the W. 22 Residence specifically. *United States v. Carpenter*, 360 F.3d 591, 595 (6th Cir. 2004). Terlizzi's connection to other co-defendants implicated in the seizure of methamphetamines is not a reasonable basis upon which to search the W. 22 Residence. His meeting with Rogers, a known drug dealer, and his association with Sohrabi, who was in a rental property under Terlizzi's name when Sohrabi made a phone call acknowledging that he had drugs "right there," are insufficient to support a probability of criminality at the W. 22 Residence. *Brown*, 828 F.3d at 383. ("We have never held . . . that a

suspect's 'status as a drug dealer, standing alone, gives rise to a fair probability that drugs will be found in his home.'") (quoting *United States v. Frazier*, 423 F.3d 526, 533 (6th Cir. 2005)). Nor does the briefcase, the only specific connection between Terlizzi's meeting with Rogers at West 23rd Street and the W. 22 Residence, support a nexus. Although Terlizzi was in possession of the briefcase during his meeting with Rogers at West 23rd Street, the affiant does not state what investigators suspect was in the briefcase. Finally, the only activity that investigators witness at the W. 22 Residence is Terlizzi stepping out of the Residence to retrieve an unknown object from his vehicle and then returning to the Residence. This activity is not indicative of a drug crime at the W. 22 Residence. See *United States v. Higgins*, 557 F.3d 381, 390 (6th Cir. 2009) (finding no probable cause in a situation where the affidavit did not "assert that the informant had been inside Higgins's [the defendant] apartment, that he had ever seen drugs or other evidence inside Higgins's apartment, or that he had seen any evidence of a crime other than the one that occurred when Higgins allegedly sold him drugs"); cf. *United States v. Ellison*, 632 F.3d 347, 349 (6th Cir. 2011) (finding an inference of criminality in the residence at issue to properly support a search warrant where the informant had observed someone come out of the residence, engage in a drug transaction, and then return to the residence).

Here, no individual set of assertions supports a probability of criminality at the W. 22 Residence. Thus, taking the affiant's statements altogether does no more to support a sufficient nexus between the criminality suspected and the W. 22 Residence. Nor does the affidavit contain observations prior to March 28, 2019, either through surveillance or use of an informant, to establish a more significant or extensive relationship between Rogers and Terlizzi that would indicate the use of the W. 22 Residence as a stash house. Accordingly, the court finds that the affidavit's limited

assertions did not contain a reasonable basis to support probable cause for a warrant to search the W. 22 Residence.

B. Good Faith Exception

The Government argues that even if the court finds that the warrant lacked probable cause, the court should apply the good faith exception. In considering the good faith exception, the court must look at the totality of circumstances and inquire “whether a reasonably well trained officer would have known that the search was illegal despite the magistrate’s authorization.” *United States v. McPhearson*, 469 F.3d 518, 525 (2006) (quoting *United States v. Leon*, 468 U.S. 897, 922–23, n.23 (1984)). However, the good faith exception is not applicable in four situations: “(1) when the affidavit supporting the search warrant contains a knowing or reckless falsity; (2) when the magistrate who issued the search warrant wholly abandoned his or her judicial role; (3) when the affidavit is so lacking in indicia of probable cause that a belief in its existence is objectively unreasonable; or (4) when the warrant is so facially deficient that it cannot reasonably be presumed valid.” *McPhearson*, 469 F.3d at 525.

Neither party raises arguments that question the veracity of the affiant’s statements or the intentions of either the affiant or the magistrate judge. Nor does Terlizzi argue that the warrant itself was so deficient in describing the items to be seized or areas to be searched. The only contention is whether the information in the affidavit lacks probable cause such that a well-trained officer would have known that a search would not have been reasonable. This third limitation on the good faith exception “prevents the introduction of evidence seized under a warrant that issued on the basis of a ‘bare bones’ affidavit,” which merely “states suspicions, beliefs, or conclusions” without providing some underlying facts. *Id.* A determination on these grounds requires “a less demanding inquiry than

the one involved in determining whether the affidavit provided a substantial basis for probable cause.” *Id.* at 526. Here, a court must consider whether the affidavit presented a “minimally sufficient nexus” that was supported by “particularized facts that indicate veracity, reliability, and basis of knowledge” that go beyond bare conclusions. *Id.*

In *United States v. McPhearson*, the United States Court of Appeals for the Sixth Circuit declined to apply the good faith exception to a search of a man’s house for crack cocaine and “other items which memorialize drug trafficking.” *Id.* at 521. The officers in *McPhearson* had requested a warrant to search McPhearson’s home after finding 6.4 grams of crack cocaine on his person during a search incident to arrest, based on an unrelated warrant, that occurred in front of his home. *Id.* Besides the cocaine found on McPhearson’s person, officers had not conducted any additional surveillance or investigation of McPhearson or his residence with respect to drug trafficking. The Sixth Circuit found that the affidavit for the search warrant of the home “lacked a substantial basis for concluding that probable cause existed for issuing the warrant” and that the good faith exception did not apply because the warrant was based on a bare bones affidavit, and was, therefore, “so lacking in indicia of probable cause that a belief in its existence is objectively unreasonable.” *Id.* at 525, 527 (citing *United States v. Laughton*, 409 F.3d 744, 748 (6th Cir. 2005)). In reaching its conclusion on the good faith exception, the court reasoned that the crack cocaine found in McPhearson’s pocket, the only connection in the affidavit between McPhearson’s home and drug trafficking, could not “establish the minimal nexus that has justified application of the good faith exception in cases where the nexus between the place to be searched and the evidence to be sought was too weak to establish probable cause.” *McPhearson*, 469 F.3d at 526. Similarly, in *United States v. Brown*, the Sixth Circuit also determined that there was an insufficient minimal nexus to support

the application of a good faith exception to a search warrant found to lack probable cause. 828 F.3d 375, 385–86 (6th Cir. 2016). In *Brown*, officers obtained a search warrant of Brown’s home for distribution quantities of heroin based on a text message about cocaine prices from a phone in a vehicle that Brown was driving and Brown’s prior conviction for conspiracy to distribute marijuana. *Id.* at 385. In concluding that the affidavit was “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,” the court reasoned that the affidavit failed to draw some plausible connection between its factual allegations and its request to search Brown’s residence for distribution quantities of heroin. *Id.* at 386.

Unlike in *McPhearson* and *Brown*, officers in this case conducted some surveillance of the W. 22 Residence. However, the affidavit’s assertions are not particularized enough to support a minimally sufficient nexus between the W. 22 Residence and the requested search for “cocaine and possible large quantities of methamphetamine based on intercepted conversations and recent DEA enforcement at 7592 Olde Eight Road . . . and 711 Twinsburg Road, Unit #1. . . .” (Aff. ¶ 117.) The affidavit represents Terlizzi’s two connections to cocaine and amphetamines are: (1) Terlizzi’s interaction with Rogers, who the affiant implicates as a major participant in the methamphetamine distribution and possession conspiracy, and who discarded kilogram bags lined with suspected cocaine residue in front of the W. 23rd Street property; and (2) that Terlizzi’s name is on the lease of a property where one of the other defendants noted in an intercepted conversation that he had drugs “right there.” And the only particularized connection between Terlizzi’s meeting between Rogers and the W. 22 Residence is Terlizzi’s movement of a briefcase (whose contents or suspected contents are unknown) in and out of the West 23rd Street property (outside of which Rogers discarded suspected cocaine wrappers), to Rogers’ car, and later to the W. 22 Residence. The

affidavit does no more to connect methamphetamines and the leased property under Terlizzi's name to the W. 22 Residence. Nor does it include any intercepted conversations that even discuss the W. 22 Residence. Thus, the briefcase, like the fact that McPhearson was found with non-distribution quantities of drugs outside his home, is the only particularized fact to connect the place searched to the evidence to be sought. And similarly, this connection is not a minimally sufficient nexus. In addition, the court finds that the Government's efforts seeking to bolster probable cause with extensive detail of intercepted conversations that do not include Terlizzi and do not mention the W. 22 Residence, as well as DEA enforcement at other properties that are not linked to Terlizzi or the W. 22 Residence, only support the conclusion that the affidavit fails to "go beyond bare conclusions and suppositions." *McPhearson*, 469 F.3d at 526. For these reasons, the court finds that the affidavit was "so lacking in indicia of probable cause that a belief in its existence is objectively unreasonable." *Id.* at 525. Thus the court declines to apply the good faith exception in this case.

IV. CONCLUSION

For the foregoing reasons, the court grants Defendant Joseph Terlizzi's Motion to Suppress Evidence obtained at the W. 22 Residence (ECF No. 64).

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

May 9, 2019